(1)
Supreme Court, U.S.
FILED
AUG 5- 2010
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Docket No. 10-186

In The
SUPREME COURT OF THE UNITED STATES

LAURENCE HALSTEAD III,
Petitioner,

v.

Government Employees Insurance Co. (GEICO) also known as GEICO Financial Services Company, et al.,
Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

PETITION FOR WRITE OF CERTIORARI

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QUESTIONS PRESENTED

(I) Will the disharmony between circuits on the meaning, interpretation and application of Federal Rule of Civil Procedure 25 be reconciled?

(ii) Is abuse of the controlling prescribed procedure for the substitution of a deceased party under Federal Rule of Civil Procedure 25(a) an abuse of procedure so as to be an actionable tort?

(iii) Under Federal Rule of Civil Procedure 25(a) does the agency of a counsel survive the death of the principal and client contrary to established and ancient law?

(iv) Will the Rule of Law in the nation's capital be preserved so as to protect the rights of an individual litigant?

PARTIES

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(d)

There are no reported opinions.

(e) BASIS FOR JURISDICTION OF THIS COURT

(i) The date of the judgment and order sought to be reviewed is December 17, 2009. Reconsideration was sought and a hearing *en banc* suggested. Both were denied on May 7, 2010.

(f) STATUTES AND REGULATIONS

D.C. Code § 12-102. Fed.R.Civ.P. 25. D.C. Code § 28-3901 *et seq.* See Appendix for text.

(g) STATEMENT OF THE CASE

Petitioner was injured badly in a rear-end auto collision in the District of Columbia. His spine was permanently damaged by the breaking of a disc and the collision also triggered a latent condition of Multiple Scleroses (MS) with which he is now saddled for the rest of his life. He filed suit for his injuries in the Superior Court of the District of Columbia. The defendants were, first-named, Government Employees Insurance Company (GEICO) and the striking driver, named Barber. By coincidence GEICO was both the primary insurance carrier of the striking driver, Barber, with a policy of $100,000. but also had an Under-insured (UIM)

policy, in an amount of $300,000 on the car that petitioner was driving, which belonged to a good friend, who was a passenger in the front seat when the collision occurred. Instead of moving to dismiss until the case against the striking driver was resolved and then seeing if there was an amount over the primary coverage awarded so as to trigger the UIM coverage as is normally done, GEICO chose to participate in the case as a completely adversary defendant from the outset.

During the course of the litigation the striking driver, Barber, died of cancer. (Appx. 23,¶43) This left GEICO in the case representing itself but instead of properly notifying the petitioner according to its obligations under the UIM coverage GEICO chose instead to engage in deception by not only failing to reveal Barber's death to the petitioner or his friend, the UIM policy holder but by actively representing in court filings that Barber was alive when he was in fact dead. (Appx 24, ¶45, 46) During this period the former attorney for Barber, whose authority to act as such terminated upon the death of Barber by operation of law, continued to claim to be representing his dead principal Thus GEICO had two attorneys in the case claiming to represent two different defendants but in fact was only representing itself.

Finally, after months, the attorney who had been representing the dead man, Barber, filed what he called a Suggestion of Death announcing for the first time the death of Barber. (Appx 24, ¶47) He had no authority to make this filing which, under Rule 25 can only be filed by an heir or designee or personal

representative or some other person with actual authority to represent the dead man. Further, contrary to Rule 25 law in the District of Columbia as set out by decisions of the United States Court of Appeals for the District of Columbia Circuit, the so-called Suggestion of Death did not set out any proper successor to the deceased defendant Barber. In fact, even after the filing of this document, for over a year thereafter, the attorney who had represented Barber before Barber's death (pursuant to GEICO's contract with the deceased) continued to make filings as if he still had authority to represent the dead man. (Appx. 24, ¶50) So it continued to be the case that the false representation was being made that Barber's original attorney was still representing Barber, the dead man. But in fact the only party being legally represented as a defendant was GEICO. (Appx. 26, ¶52) It is important to note that in the District of Columbia, by statute, Federal Rule of Civil Procedure 25 rather than the local rule 25 governs all proceedings, including those in the municipal court.

This activity by GEICO caused months and months of delay, over a year all told. (Appx 28, ¶60) This delay caused great damage to the petitioner. During this period, among other things, GEICO had its attorney filed a motion to dismiss the petitioner's case altogether, based on the purported lapse of 90 days after the filing of a proper Suggestion of Death. (Appx. 27, ¶58, Appx 28, ¶59) This was despite the fact that the Superior Court judge had ordered a pause in the litigation. Thus petitioner suffered considerable damage to his person, in terms of seeking medical treatment and to a valuable

business property that came under attack from the authorities in the town in Pennsylvania where it was located, all because of the delay.

Though no fault of his own petitioner lost his counsel in the Superior Court case and had bad luck in finding a replacement. Ultimately he obtained counsel who, against his interests and desire, settled the case in a hurry for only the primary coverage, despite his earlier offers within the cumulative coverage. In settling the case petitioner carefully signed a release which only released GEICO from liability from the actual physical injury resulting from the rear-ending and personal injuries growing out of those injuries. (Appx. 35)

Petitioner then brought suit in the United States District Court for the District of Columbia based on diversity against GEICO for abuse of process, malicious use of process, and breach of its duties to him under the UIM coverage, including for violation of the D. C. Consumer Protection Procedures Act, which the U.S. Court of Appeals for the District of Columbia Circuit has pointed out, applies to an authorized guest driver and which provides for treble damages and counsel fees plus punitive damages. He also sued the attorney and his firm who purported to be representing the dead man when in fact they were only representing GEICO as a matter of law during the period of delay and attempted dismissal. (Appx. 10)

The defendants moved to dismiss. Those motions were granted without any analysis of the actual release. (Appx. 03, 04) Nor was there any analysis of

the abuse of the substitution process or of the applicability of the D. C. Consumer Protection Procedures Act. Petitioner took an appeal to the United States Court of Appeals. It granted motions by GEICO and its attorney and his firm for summary affirmance (Appx. 1) also without the analyses avoided by the lower court, not even of its own controlling decisions on Rule 25 cited by petitioner. This petition ensues.

* * * *

(ii) The basis for the jurisdiction in the U.S. District Court was diversity of citizenship and the petitioner also contends that his treatment there raises an issue of lack of due process in the treatment that he received under Rule 25.

ARGUMENT

The reason that the Court should accept this petition is that there is a split between the circuits on the interpretation of Federal Rule of Civil Procedure 25 concerning the procedure and practice of substitution of a party when a party to litigation dies during the course of that litigation, particularly between the District of Columbia Circuit and the Second Circuit. See *Rende v. Kaye*, 415 F.2d 983 (D.C.Cir.1969) and *McSurely v. McClellan*, 753 F.2d 88 (D.C.Cir.1985) as opposed to *Unicorn Sales, Inc. v. Banerjee*, 138 F.3d 467, 469-70 (2nd Cir.1998). Moreover there is a point here that this Court needs to straighten out involving the nation's capital, where the rule of law should be particularly upheld. By statute the District of Columbia has adopted the Federal Rule concerning substitution of parties in its courts in the place of its similar local rule and decreed by that statute that in its local courts the federal rule for substitution of parties shall be followed. District of Columbia Code, § 12-102. In turn the United States Court of Appeals for the District of Columbia Circuit in its decisions has set out procedures which must be followed in substituting a new party for a party who has died during litigation. These procedures are clearly processes of the court. Yet here those processes were greatly distorted and abused to achieve precisely the opposite result that the rule contemplates under the D.C. Circuit's own opinions and still the lower court here refused to consider that process as a process of the court and the court of appeals adopted that

avoidance of what was at issue without analysis or examination.

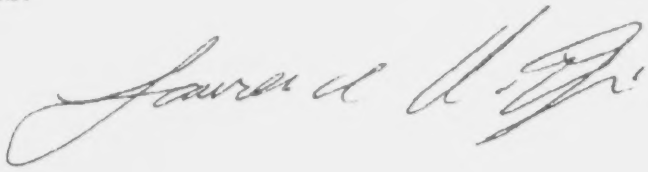
It is important for this Court, in order to preserve the effectiveness of the federal rules, to examine what was done here and make clear that the substitution process is a process of the courts which cannot be freely abused as it was here. That is particularly true in this case where the United States Court of Appeals for the District of Columbia Circuit has in its opinions specifically described the actions taken here by the respondents as an abuse of its processes by referring to them as a "tactical maneuver" to place upon a plaintiff a burden that is not his and yet has refused to apply and uphold its own opinions in that regard. See *Rende v. Kaye, supra*, 415 F.2d at 985-86. If a "tactical maneuver" which a court says is not legal and not in accordance with a rule is not an abuse of the process established by the rule in question than it is difficult to conceive what is such an abuse of that process. Because of the importance of Rule 25 of the Federal Rules of Civil Procedure generally in the administration of the federal courts it is important for this court to issue the petition in this case and make clear that its processes cannot be abused with impunity.

A further point in favor of the Court's taking this case is that the decisions here in the U.S. Court of Appeals and District Court ignored and refused to examine what the petitioner alleged was an essential part of the abuse of the processes of the court and in doing so refused to consider one of the oldest points established in our law, namely that the death of a principal terminates the agency of an agent, particularly when that relationship involves an

attorney as the agent. *Hunt v. Rousmaneir's Administrators*, 21 U.S. 174, 5 L.Ed. 589, 8 Wheat 174 (1823) (Opinion per Marshall, C.J.). It is an integral part of the complaint of the petitioner of abuses of the court processes in this case that the respondent Government Employees Insurance Company (GEICO) extensively represented that it was representing a dead client, initially even misrepresenting that the man was alive when he was not and then continuing to purport to represent him to the damage of the petitioner for over a year when he was in fact dead. This abuse is integral to the abuse of the substitution processes of a court under the procedures of Rule 25 and this is part of what this Court needs to clarify for courts to properly and consistently apply Rule 25. See *Atkins v. City of Chicago*, 547 F.3d 869 872, 874 (7th Cir.2008).

As a final factor that petitioner urges the Court to take into consideration in deciding upon granting this petition the petitioner points to the fact that he is an individual and one who was badly and permanently damaged in the rear-end auto collision that led to these collateral events constituting, as he alleges, the abuses of process and violation of obligations owed to him under the District of Columbia Consumer Protection Procedures Act. D.C. Code § 28-3901 *et seq.* See *Athridge v. Aetna Casualty & Surety Co.*, 351 F.3d 1166, 1176 (D.C.Cir.2003). While it is not the function of this Court to act as a Court of Appeals assuring individual justice it is important to the rule of law that it is responsible for preserving that when there is an enormous imbalance between an individual and his rights on the one hand and, on the other hand, an

enormously politically and economically powerful entity such as the respondent GEICO in this instance, one whose controlling figure is an enormous contributor to those in power, that in the nation's capital in a time of rising concern over the ignoring of ordinary citizens due to an elitist concept of the law that it be made clear that the issues discussed will not be ignored. The rule of law demands no less.



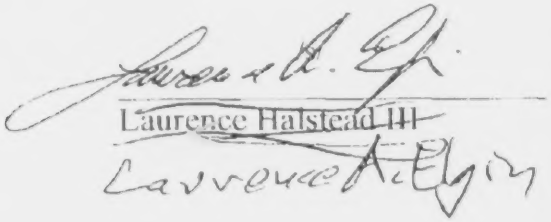
CERTIFICATE OF SERVICE

I hereby certify that I have caused the Petitioner's PETITION FOR WRIT OF CERTIORARI to be served by United States mail, postage prepaid, this 5th day of August, 2010 upon:

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